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EXAMINER	
SCHILLER, ALINA	
ART UNIT	PAPER NUMBER
3671	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/538,789	KREMER, KLAUS	
	Examiner	Art Unit	
	ALINA SCHILLER	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *06/10/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "cells having at least partially round bases" (claim 10), the cell structure open on top (claim 14), the cell structure partially closed on top by the top plate (claim 15) and "an operating width ..., which is at least approximately as wide as the self-propelled support device" (claim 20) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

1. The disclosure is objected to because the proper headings ("Field of the Invention", Background of the Invention", "Summary of the Invention", etc.) are missing.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

4. Regarding claims 1, 5 and 9, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

5. Regarding claim 20, the phrase "particularly" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

6. Claim 7 recites the limitation "the longitudinal girder" in line 2. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 8 recites the limitation "the longitudinal girder" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

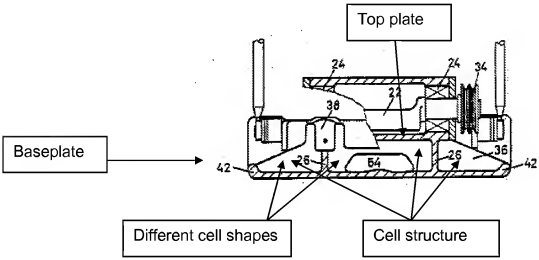
8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. **Claims 1, 3, 7, 8, 11-15, 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Baumers 4,067,244.**

Regarding claim 1 as best understood, Baumers discloses a vibration plate (Abstract, Figs 1 and 2), having a baseplate (as seen in the modified picture below taken from Fig. 2), which may be set into vibration by an exciter device (28; col. 1, lines 11-18), having at least one ground plate (10), a top plate, and a cell structure, which is positioned between the ground plate and the top plate and stiffens the baseplate (as seen in the modified picture below), as supporting components, wherein the supporting components form a baseplate having a stiffness (which is a physical property of the baseplate; col. 1, lines 42-44). Regarding the lowest natural frequency of the baseplate being at least 2 to 5 times, preferably at least 3 to 4 times the frequency of its vibration, the examiner notes that from the applicant disclosure, a structure of the vibration plate as that claimed in claim 1 inherently results in the lowest natural frequency of the baseplate in the above-mentioned ranges. Baumers discloses the same structure for

the vibration plate and states that the baseplate is as lightweight as possible, made of thin material, with sufficient rigidity (col. 1, lines 42-46; 54-58), which thus would inherently have the same lowest natural frequency of the baseplate as that claimed in claim 1.



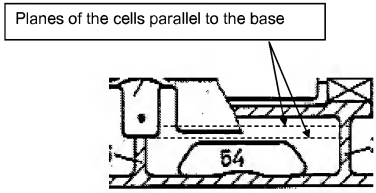
Regarding claim 3 as best understood, Baumers discloses the structure as mentioned above and that the baseplate is lightweight (col. 1, lines 42-46), which would inherently result in the vibration plate having a surface pressure because of its intrinsic weight between 0.1 N/cm^2 and 3 N/cm^2 (which belongs to the vibration plate by its very nature).

Regarding claims 7 and 8 as best understood, Baumers discloses that the longitudinal girder is positioned below the exciter device (as seen in Fig. 2), and is implemented as a frame lying on the ground plate (as seen in Fig. 2).

Regarding claim 11 as best understood, Baumers discloses that the cell structure has at least partially differing cell shapes (as seen in the modified picture above).

Regarding claim 12 as best understood, Baumers discloses that the cell structure has closed cell side walls (as seen in Figs. 1 and 2; longitudinal ribs 26 and transversal ribs 36).

Regarding claim 13 as best understood, Baumers discloses that the planes of the cells parallel to the base each have the same shape and area as the base (as seen in the modified picture below taken from Fig. 2).



Regarding claim 14 as best understood, Baumers discloses that the cell structure is open on top, under the top plate (Fig. 2).

Regarding 15 as best understood, Baumers discloses that the cell structure is partially closed on top by the top plate (Figs. 1 and 2).

Regarding claim 17 as best understood, Baumers discloses that the vibration plate has a vibration-insulated suspension (48), which is connected to one of the supporting components of the baseplate (as seen in Fig. 1). The examiner notes that

the phrase "for installation on a self-propelled support device" is for intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. It is the examiner position that Baumer's device is capable of meeting the limitation in claim 17.

Regarding claim 18 as best understood, Baumers discloses that the exciter device is attached to at least one of the supporting components of the baseplate (Figs. 1 and 2).

Regarding claim 19 as best understood, Baumers discloses that the the exciter device may be coupled to a drive of the self-propelled support device (44) and driven thereby (col. 1, lines 10-18).

Regarding claim 20 as best understood, Baumers discloses that the baseplate has an operating width essentially corresponding to its long side (Fig. 1), which is at least approximately as wide as the self-propelled support device, particularly wider than the lane of the support device (Fig. 2).

Regarding claim 21 as best understood, Baumers discloses that the baseplate has a cross-section, in which the region of the ground plate lying forward in operating direction is curved upward together with a forward region of the top plate (as seen in Fig. 1).

Regarding claim 22 as best understood, Baumers discloses that the baseplate has a cross-section in which the region of the top plate lying to the rear in the operating direction is slanted falling downward the ground plate (as seen in Fig. 1).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 2, 4-6, 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baumers 4,067,244.

Regarding claim 2 as best understood, Baumers discloses that it is well known in the art to have welded structures for the baseplate components, in order to obtain a lightweight baseplate (col. 1, lines 45-47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use supporting components welded to one another, since this structure is well known in the art, in order to achieve a lightweight baseplate, as taught by Baumers. The examiner notes that the phrase "to form a self-supporting body" is for intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it

meets the claim. It is the examiner position that Baumer's device is capable of meeting the limitation in claim 2.

Regarding claims 4 and 5 as best understood, Baumers discloses a vibration plate as previously described, but remains silent as to the fact that the vibration of the baseplate may be set as desired at a frequency between 30 Hz and 60 Hz, and at an amplitude of more than 0.1 mm and less than 10 mm, preferably 5 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Baumers to have the vibration of the baseplate set as desired at a frequency between 30 Hz and 60 Hz, and at an amplitude of more than 0.1 mm and less than 10 mm, preferably 5 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller, 105 USPQ 233* (MPEP 2144.05[R5] II A). Regarding the ranges claimed in claims 4 and 5, it would have been obvious matter of design choice to modify the device of Baumers to have the claimed ranges, since applicant has not disclosed that including these specific ranges provides any unexpected results, and it appears that the device would perform equally well with these ranges. Moreover, applicant claims regarding these ranges that they are "as desired", which means other ranges can be included, which provide the same results. The examiner notes regarding these limitations that in Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a

device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device (see MPEP 2144.04 (IV)).

Regarding claim 6 as best understood, Baumers discloses that the baseplate has at least one longitudinal girder (26) as a further supporting component, which extends parallel to and over a significant part of a long side of the baseplate (Fig. 2; col. 3, line 38). Baumers discloses that it is well known in the art to have welded structures for the baseplate components, in order to obtain a lightweight baseplate (col. 1, lines 45-47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the girder welded to the cell structure, since this structure is well known in the art, in order to achieve a lightweight baseplate, as taught by Baumers.

Regarding claim 9 as best understood, Baumers discloses a device as previously set forth, wherein the individual cells of the cell structure each inherently has a base, but remains silent as to the maximum lateral extension of the base being 20 mm to 200 mm, preferably 56 mm to 162 mm. It would have been obvious matter of design choice to modify the device of Baumers to have the maximum lateral extension of the base 20 mm to 200 mm, preferably 56 mm to 162 mm, since applicant has not disclosed that having these specific ranges provides any unexpected results, and it appears that the device would perform equally well with these ranges. The examiner notes regarding this limitation that in Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims

was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device (see MPEP 2144.04 (IV)).

Regarding claim 10 as best understood, Baumers discloses a device as previously set forth, but remains silent as to the cell structure having cells having at least partially round bases. It would have been obvious matter of design choice to modify the apparatus of Baumers to have the cell structure having cells with at least partially round bases, since applicant has not disclosed that having this specific shape solves any stated problem, provides any unexpected results, or is for any particular purpose, and it appears that the apparatus would perform equally well with this shape. The examiner notes regarding this limitation In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) (The court held that the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would have found it obvious absent persuasive evidence that the particular configuration of the claimed container was significant) (see MPEP 2144.04 (IV)).

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baumers 4,067,244 in view of Andrews 981,517.

Baumers discloses a device as previously described, but fails to disclose that a profiled strip is attached externally to the ground plate. Andrews teaches that it is known in concrete finishing devices to have a profiled lower surface for the tamping device. It would have been obvious to one having ordinary skill in the art at the time the

invention was made to modify the device of Baumers to have a profiled lower surface like the one taught by Andrews to be useful in finishing concrete, it would have been well within the skill of those in this art to provide such a surface as an add on strip, in order to retro fit the device to have various uses.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALINA SCHILLER whose telephone number is (571)270-3088. The examiner can normally be reached on Mon-Fri, 7:30AM-4:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571)272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas B Will/
Supervisory Patent Examiner, Art Unit 3671

AS
02/04/2008